

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

WENDELL PETTRY,

Plaintiff,

v.

**Civil Action No. 2:06cv91
(Judge Maxwell)**

**BETH MCCARDLE,
MAGISTRATE JOHN DRAKE,**

Defendants.

REPORT AND RECOMMENDATION

This case came before the Court on September 20, 2006, by the filing of a civil rights complaint. On October 25, 2006, the Court received a letter from Plaintiff in which he states that he would like to drop this suit. Plaintiffs' letter was construed as a Motion to Dismiss and was docketed accordingly.

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the undersigned recommends that Plaintiff's Motion to Dismiss (dckt. 12) be **GRANTED** and this case be **DISMISSED without prejudice.**

Within ten (10) days after being served with a copy of this recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections shall also be submitted to the Honorable Robert E. Maxwell, United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. §

636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985);
United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to mail a copy of this Report and Recommendation to the *pro se* plaintiff and counsel of record, as applicable.

DATED: November 21, 2006.

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE